

No. 26A382

**In the
Supreme Court of the United States**

SAMUEL STRULOVITCH, MS ACQUISITION I, LLC, AND 10 CLAREMONT AVENUE, LLC,
Applicants,

v.

MOSHE BAIN,
Respondent,

and

PARKVIEW OPERATING CO., LLC, WESTCHESTER GARDENS REALTY LLC,
JONATHAN BLEIER, AND ROBERT BLEIER,
Nominal Respondents.

**RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION
FOR STAY PENDING APPELLATE REVIEW**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
BACKGROUND AND PROCEDURAL HISTORY.....	2
REASONS FOR DENYING THE APPLICATION.....	8
I. THIS COURT LACKS JURISDICTION TO ISSUE A STAY	8
A. This Court Lacks Jurisdiction To Issue A Stay Under Sections 1257(a) and 2101(f).....	8
B. Neither The All Writs Act Nor 28 U.S.C. § 2283 Authorizes A Stay	14
II. A STAY IS NOT WARRANTED	20
A. This Court Is Unlikely To Grant Certiorari.....	21
B. There Is Not A Fair Prospect That A Majority Of This Court Will Vote To Reverse	23
C. Strulovitch Fails To Show Irreparable Harm	31
D. The Balance Of The Equities Counsels Against A Stay	33
CONCLUSION.....	35

TABLE OF AUTHORITIES

CASES	Page(s)
<i>AARP v. Trump</i> , 605 U.S. 91 (2025)	12, 13
<i>Ambassador College v. Geotzke</i> , 675 F.2d 662 (5th Cir. Unit B 1982)	30
<i>Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers</i> , 398 U.S. 281 (1970)	16, 17, 18
<i>Atlantic Richfield Co. v. Christian</i> , 590 U.S. 1 (2020)	9
<i>Beame v. Friends of the Earth</i> , 434 U.S. 1310 (1977)	31, 32
<i>Box v. Planned Parenthood of Indiana & Kentucky, Inc.</i> , 587 U.S. 490 (2019)	21, 22
<i>CBS, Inc. v. Davis</i> , 510 U.S. 1315 (1994)	20
<i>Clinton v. Goldsmith</i> , 526 U.S. 529 (1999)	15
<i>In re Congregation Birchos Yosef</i> , 535 B.R. 629 (Bankr. S.D.N.Y. 2015).....	26, 27, 28, 33
<i>Cox Broadcasting Corp. v. Cohn</i> , 420 U.S. 469 (1975)	10
<i>Cutter v. Wilkinson</i> , 544 U.S. 709 (2005)	22, 30
<i>Does 1-3 v. Mills</i> , 142 S. Ct. 17 (2021)	21
<i>Employment Division, Department of Human Resources of Oregon v. Smith</i> , 494 U.S. 872 (1990)	20, 23, 25, 30

	Page(s)
<i>Esses v. Rosen</i> , No. 24-cv-3605, 2024 WL 4494086 (E.D.N.Y. Oct. 15, 2024)	30
<i>Flynt v. Ohio</i> , 451 U.S. 619 (1981)	9
<i>FTC v. Dean Foods Co.</i> , 384 U.S. 597 (1966)	15, 16, 19
<i>Fulton v. Philadelphia</i> , 593 U.S. 522 (2021)	28
<i>Garcia v. Church of Scientology Flag Service Organization, Inc.</i> , 2021 WL 5074465 (11th Cir. Nov. 2, 2021)	27
<i>Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal</i> , 546 U.S. 418 (2006)	23
<i>Hanson v. District of Columbia</i> , 120 F.4th 223 (D.C. Cir. 2024)	31
<i>In re Hellman (Wolbrom)</i> , 298 N.Y.S.2d 540 (App. Div. 1969)	24
<i>Henderson v. United States</i> , 575 U.S. 622 (2015)	32
<i>Hobby Lobby Stores, Inc. v. Sebelius</i> , 568 U.S. 1401 (2012)	16
<i>Hollingsworth v. Perry</i> , 558 U.S. 183 (2010)	20, 21
<i>Jefferson v. City of Tarrant</i> , 522 U.S. 75 (1997)	9, 10, 13
<i>Kingsbridge Center of Israel v. Turk</i> , 469 N.Y.S.2d 732 (App. Div. 1983)	24
<i>Kozlowski v. Seville Syndicate, Inc. (In re Kozlowski)</i> , 314 N.Y.S.2d 439 (Sup. Ct. 1970)	24
<i>Labrador v. Poe ex rel. Poe</i> , 144 S. Ct. 921 (2024)	21

	Page(s)
<i>Liles v. Nebraska</i> , 465 U.S. 1304 (1984)	9
<i>Malliotakis v. Williams</i> , 146 S. Ct. 809 (2026)	16, 17, 18, 19
<i>Market Street Railway Co. v. Railroad Commission of State of California</i> , 324 U.S. 548 (1945)	9
<i>Maslenjak v. United States</i> , 582 U.S. 335 (2017)	22
<i>McCarthy v. Fuller</i> , 714 F.3d 971 (7th Cir. 2013)	30
<i>Meisels v. Uhr (In re Meisels)</i> , 593 N.E.2d 1359 (N.Y. 1992).....	23
<i>Messiah’s Covenant Cmty. Church v. Weinbaum</i> , 905 N.Y.S.2d 209 (App. Div. 2010)	24, 26
<i>Mew Equity, LLC v. Sutton Land Services, LLC</i> , 41 N.Y.S.3d 281 (App. Div. 2016)	24
<i>Nash v. Florida Industrial Commission</i> , 389 U.S. 235 (1967)	12
<i>National Socialist Party of America v. Village of Skokie</i> , 432 U.S. 43 (1977)	11, 12
<i>Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Commission</i> , 479 U.S. 1312 (1986)	15
<i>Renaissance Arcade & Bookstore v. County of Cook</i> , 473 U.S. 1322 (1985)	16, 19
<i>Roman Catholic Diocese of Brooklyn v. Cuomo</i> , 592 U.S. 14 (2020)	28
<i>Schwartz v. Schwartz</i> , 913 N.Y.S.2d 313 (App. Div. 2010)	24

	Page(s)
<i>Serbian Eastern Orthodox Diocese for the United States of America & Canada v. Milivojevic</i> , 426 U.S. 696 (1976)	30
<i>Sherbert v. Verner</i> , 374 U.S. 398 (1963)	23, 29
<i>Shoop v. Twyford</i> , 596 U.S. 811 (2022)	15, 17
<i>Sprietsma v. Mercury Marine</i> , 537 U.S. 51 (2002)	31
<i>United States Alkali Export Association v. United States</i> , 325 U.S. 196 (1945)	19
<i>United States v. Denedo</i> , 556 U.S. 904 (2009)	15
<i>United States v. Williams</i> , 504 U.S. 36 (1992)	30
<i>Volkswagenwerk A.G. v. Falzon</i> , 461 U.S. 1303 (1983)	18, 19, 20
<i>Watson v. Jones</i> , 80 U.S. (13 Wall.) 679 (1872)	30
<i>Weisenberg v. Sass (In re Weisenberg)</i> , 619 N.Y.S.2d 597 (App. Div. 1994)	24
<i>West Virginia v. B.P.J. ex rel. Jackson</i> , 143 S. Ct. 889 (2023)	31
<i>Yeshiva University v. Yu Pride Alliance</i> , 143 S. Ct. 1 (2022)	13, 14
<i>Younger v. Harris</i> , 401 U.S. 37 (1971)	34

FEDERAL STATUTES

28 U.S.C. § 1257(a)	9, 10, 11, 17
28 U.S.C. § 1651.....	15

	Page(s)
28 U.S.C. § 1651(a)	14, 15
28 U.S.C. § 1781.....	18, 19
28 U.S.C. § 2101(f)	9
28 U.S.C. § 2283.....	14, 15

STATE STATUTES AND REGULATIONS

N.Y. C.P.L.R. § 5701	7
N.Y. C.P.L.R. § 7503(b).....	24, 26, 28
N.Y. Comp. Codes R. Regs. tit. 22 § 1250.5(a).....	7
N.Y. Comp. Codes R. Regs. tit. 22 §1250.9(a).....	7
N.Y. Comp. Codes R. Regs. tit. 22 § 1250.15(a).....	7

OTHER AUTHORITIES

Sup. Ct. R. 20.1	15, 19
------------------------	--------

INTRODUCTION

Strulovitch seeks this Court's immediate intervention to stay an interlocutory ruling of a New York state trial court, before any New York appellate court has reviewed or adjudicated the lawfulness of that order. He does so despite never seeking to perfect or expedite his appeal in the New York Appellate Division. And he does not explain why issuing a stay now is necessary to aid this Court in hearing the dispute later, if the New York courts resolve the issues against Strulovitch and he seeks certiorari. This Court lacks jurisdiction and cannot order any relief under the All Writs Act or its state-proceedings equivalent. That is reason alone to deny.

Apart from those threshold defects, this Court is unlikely to ultimately grant certiorari or resolve the merits of this dispute in Strulovitch's favor. He raises two questions that he concedes are issues of "first impression," Application for Stay ("App.") 13, and he does not point to a single decision of a federal court of appeals or a state's highest court adjudicating those issues—meaning this Court would have to be the first to decide them. And Strulovitch is wrong on the merits. This case concerns Strulovitch's efforts to turn to a beis din—an Orthodox Jewish religious council—to resolve a commercial dispute between the parties. New York law supplies neutral and generally applicable principles to govern whether parties have agreed to arbitrate and the enforcement of arbitration awards. The trial court's preliminary injunction flowed from these generally applicable principles. The court ordered Strulovitch to cease an arbitration he unilaterally commenced without an agreement, and to make necessary efforts to withdraw the seruv, which threatened Bain with

serious harm in his Orthodox Jewish community. The preliminary injunction does not offend the First Amendment.

Strulovitch also fails to establish irreparable harm or show that the balance of the equities favors a stay. His claim of irreparable injury is undercut by his litigation conduct. For nearly two years, Strulovitch chose not to challenge an injunction prohibiting him from enforcing a beis din award or from returning to that beis din; he refused to participate in a beis din initiated by Bain; and he insisted that the case should go forward in civil court, telling the New York trial court that he was “happy” for it to resolve the commercial dispute between the parties. Appendix to Stay Opposition (“Supp. Appx.”) 25a, 38a. To this day, Strulovitch has failed to perfect his appeal or seek expedition in the New York Appellate Division. Balancing the equities, Bain faces substantial harm due to the serious consequences flowing from the serv. And the public interest favors both adjudicating the parties’ dispute in New York state court, where all have agreed to proceed, and respecting the state-court appellate process.

In short, Strulovitch asks this Court to act on an emergency basis, to stay a state trial court preliminary injunction, before *any* appellate review, and to remedy harms flowing from his own machinations in the lower court proceedings. Any emergency is of his own making. This Court should deny the request for a stay.

BACKGROUND AND PROCEDURAL HISTORY

This case arises from an ownership dispute over a nursing facility in New York. Appendix to Application for Stay (“Appx.”) 90. Several parties allege an interest in that commercial property, including applicant Samuel Strulovitch, respondent Moshe

Bain, and other entities and individuals who are nominal respondents in this action. Supp. Appx. 7a, 26a.

1. In 2022, seeking to assert his ownership interest in that nursing facility, Strulovitch initiated a proceeding against one of the nominal respondents in a religious tribunal known as a “beis din” in Rockland County, New York. Appx. 90; *see* Appx. 17-18. Strulovitch states he believes that, under Jewish law, all disputes—commercial or otherwise—between Jewish parties must be resolved by a beis din. Appx. 156. Strulovitch did not, however, include Bain in the Rockland beis din proceeding, meaning that the proceeding did not involve all parties with an interest in the nursing facility. Appx. 18, 76, 90. In April 2024, the Rockland beis din awarded Strulovitch a 22% ownership interest in the nursing facility. Appx. 90.

The award provided that “[o]n all matters regarding execution of the ruling, if they do not find common ground, [the parties] shall return to the Rabbinical Court.” *Id.* But rather than returning to the beis din, Strulovitch went to civil court. Invoking the same procedure that is used to confirm civil arbitration awards, Strulovitch commenced an action in Rockland County Supreme Court (what New York calls its trial-level courts) to confirm the Rockland beis din award. Supp. Appx. 1a-3a.

Bain, also an Orthodox Jew, has an undisputed ownership interest in the nursing facility. But he was excluded from the 2024 beis din and Strulovitch’s Rockland County Supreme Court action. Appx. 18, 76, 90; Supp. Appx. 1a-2a. Bain accordingly sought to initiate his own rabbinical arbitration before a different beis din in Brooklyn, New York—this time including the relevant parties. *See* Appx. 93-

98. As documented in the hazmana (a rabbinical summons, Appx. 7), Bain complained that Strulovitch attempted “to distribute rights with regard to the partnership without litigating with all the partners.” Appx. 93. The Brooklyn beis din instructed Strulovitch not to have the prior “verdict certified by the civil courts, until you have litigated before a rabbinic court that is acceptable to the parties.” *Id.* At bottom, Bain wanted to “start anew” in a fresh beis din that would “bring everyone else in” with a claimed interest in the nursing facility to decide everyone’s rights together. Supp. Appx. 28a, 23a.

Despite professing a desire to proceed with “all the players involved,” Strulovitch refused to participate in any beis din that included the relevant stakeholders. Supp. Appx. 24a. The Brooklyn beis din issued its first hazmana on October 8, 2024. Appx. 94. When Strulovitch failed to respond, it issued a second hazmana on November 5. Appx. 96. Strulovitch still ignored the Brooklyn beis din, which issued a third hazmana on November 11. Appx. 98. Strulovitch ultimately refused to proceed before the Brooklyn beis din with the parties who have an interest in the nursing facility. Supp. Appx. 24a, 56a.

2. Without Strulovitch’s cooperation to adjudicate before the Brooklyn beis din, Bain turned to the civil court system to secure his property interest in the nursing facility, just as Strulovitch had done following the Rockland beis din award. In November 2024, Bain initiated the underlying action in the Westchester County Supreme Court (the trial court) seeking, among other things, to vacate the Rockland beis din award under N.Y. C.P.L.R. Article 75 or, in the alternative, to obtain

declaratory relief concerning his ownership interest in the nursing facility. Appx. 81-84. Bain joined the parties with a claimed ownership interest in the nursing facility in the underlying action. Appx. 61. In December 2024, following a hearing, the trial court preliminarily enjoined Strulovitch “from taking any action to confirm or enforce the [Rockland beis din award] including, without limitation, seeking modification, clarification, or explanation of the Award from the issuing Rabbinical Court.” Supp. Appx. 51a. Strulovitch did not appeal that December 2024 injunction.

Nor did Strulovitch object to resolving the underlying commercial dispute in civil court. Just the opposite: Strulovitch’s counsel, speaking on his behalf before the Westchester trial court, expressly stated that his client would like “for everything to be resolved in this proceeding,” and that he was “happy to have it here.” Supp. Appx. 25a; *see also* Supp. Appx. 38a. After the court denied Strulovitch’s motion to dismiss Bain’s complaint, discovery commenced. And over the next eight months, Strulovitch voluntarily and actively participated in discovery, including affirmatively issuing document requests and conducting depositions of Bain and all of the nominal respondents. Supp. Appx. 58a.

As discovery came to a close, Strulovitch decided he was no longer content to proceed in the trial court. In February 2026, Strulovitch unilaterally initiated yet another beis din proceeding, this time against Bain and only Bain. Supp. Appx. 53a. The subject of this rabbinical arbitration, as stated in the hazmana procured by Strulovitch, was simply “court case Index No. [7]5548/2024”—the docket number of

this underlying action in the trial court. *Id.* Strulovitch failed to include the other necessary parties with affected interests in the nursing facility. *Id.*; *see also* Appx. 5.

Upon learning of this new proceeding, Bain moved for a temporary restraining order, for a preliminary injunction, and to hold Strulovitch in contempt for circumventing the December 2024 injunction by initiating a new beis din proceeding. Appx. 103-06, 109-13. On March 24, 2026, the trial court “temporarily enjoin[ed] any proceedings in any other fora, including any beis din.” Appx. 186. Strulovitch notified the beis din that the trial court had restrained him from taking any further action in the rabbinical tribunal. Appx. 165.

Acting of its own accord, the beis din then issued a “seruv” against Bain—essentially a “letter of recalcitrance.” Appx. 165; *see* Appx. 5, 136. The seruv subjects Bain “to all forms of communal sanctions and societal pressures due his flagrant violation of Jewish law.” Appx. 136. A representative for Strulovitch had previously warned Bain about the possibility of a seruv, stating that it was “serious” and that Bain’s lawyers could not “protect [him] from . . . [his] religious obligations.” *Id.* In the beis din’s own words, the decision to issue a seruv was “a response to the chutzpah of enjoining a litigant from pursuing his Halachic rights to a [beis din proceeding].” Appx. 165.

On April 24, 2026, the trial court issued the preliminary injunction that is the subject of Strulovitch’s stay application. The court held that the parties “may agree to go to a beis din . . . if they wish.” Appx. 9. But “unless and until this Court rules otherwise, without such an agreement, these disputes among the parties shall remain

in front of this Court and this Court only,” *id.*, precisely what Strulovitch and Bain had agreed to in February 2025, *see* Supp. Appx. 25a. And “[t]o rectify the potential damage to Bain’s reputation in the religious community resulting from the issuance of the seruv,” the court ordered Strulovitch to “take all steps necessary to have the Beis Din withdraw it, including withdrawing the entire proceeding.” Appx. 9. The trial court denied Strulovitch’s request for a stay pending appeal. Appx. 213.

3. On May 4, 2026, Strulovitch filed a notice of appeal to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, seeking review of the April 2026 preliminary injunction. Appx. 42-43; *see* N.Y. C.P.L.R. § 5701 (preliminary injunctions are immediately appealable). He also sought interim relief from a single Justice of the Appellate Division, which was denied. Appx. 12-13. And he sought a stay pending appeal from the Appellate Division, which was fully briefed as of May 21, 2026. Appx. 242. Strulovitch submitted a letter on July 21 requesting the court decide his motion “expeditiously.” *Id.* As of this filing, the Appellate Division has not yet ruled on that motion.

Apart from the stay proceedings, Strulovitch has taken no steps to prosecute his appeal, let alone expedite it. Appellants in the New York Appellate Division must “perfect” their appeals within six months of filing a notice of appeal and can do so by filing their brief and the underlying record. N.Y. Comp. Codes R. Regs. tit. 22 §§ 1250.5(a), 1250.9(a). Strulovitch has not taken those basic steps. Nor has he asked the Appellate Division to exercise its discretion to expedite consideration of the merits of his appeal by requesting a “preference,” *id.* § 1250.15(a).

4. On Thursday, September 24—16 days after first attempting to file an application for stay in this Court—Strulovitch informed the Appellate Division that he is seeking relief in this Court. Strulovitch has not filed anything with, or sought any relief from, the New York Court of Appeals.

REASONS FOR DENYING THE APPLICATION

The Court lacks jurisdiction over this dispute, which concerns an interlocutory state trial court decision that has not been reviewed by any appellate court in New York. Nor does the All Writs Act or its state-proceedings equivalent authorize a stay, because the failure to issue a stay now would not in any way impede this Court’s jurisdiction to later adjudicate the federal issues Strulovitch raises. These basic jurisdictional defects are dispositive, and reason alone to deny a stay. But Strulovitch does not satisfy the stay factors either. This Court is not likely to grant certiorari to decide two issues of first impression that have not percolated in any lower appellate court. The merits do not favor Strulovitch: The New York trial court’s order rests on neutral and generally applicable principles of New York arbitration law, the application of which do not violate the First Amendment. And Strulovitch’s claim of irreparable harm is fatally undercut by his failure to act expeditiously. The balance of equities likewise counsels against a stay. This Court should deny the application.

I. THIS COURT LACKS JURISDICTION TO ISSUE A STAY

A. This Court Lacks Jurisdiction To Issue A Stay Under Sections 1257(a) and 2101(f)

1. Congress strictly limited this Court’s jurisdiction to review state court judgments. This Court has jurisdiction to review only “[f]inal judgments or decrees

rendered by the highest court of a State in which a decision could be had.” 28 U.S.C. § 1257(a). That provision is exacting: Section 1257(a) “establishes a firm final judgment rule.” *Jefferson v. City of Tarrant*, 522 U.S. 75, 81 (1997). And this Court’s authority to issue stays under Section 2101(f) turns on there being a “final judgment or decree of any court” that “is subject to review by the Supreme Court on writ of certiorari.” 28 U.S.C. § 2101(f). That is, relief under Section 2101(f) to stay a state-court order turns on whether there is jurisdiction under Section 1257(a). *Liles v. Nebraska*, 465 U.S. 1304, 1304 (1984) (Blackmun, J., in chambers) (concluding, absent a final order from the state’s highest court, that “I have no jurisdiction to act pursuant to 28 U.S.C. § 2101(f)”; see App. 4 (tying relief under Section 2101(f) to jurisdiction under Section 1257(a))).

“To be reviewable by this Court, a state-court judgment must be final ‘in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.’” *Jefferson*, 522 U.S. at 81 (quoting *Market Street Ry. Co. v. R.R. Comm’n of State of Cal.*, 324 U.S. 548, 551 (1945)); see also *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 12 (2020) (citing *Jefferson*, 522 U.S. at 81). “[W]here anything further remains to be determined by a State court,” this Court lacks jurisdiction under Section 1257(a). *Flynt v. Ohio*, 451 U.S. 619, 620 (1981) (per curiam) (citation omitted). Reviewable state court judgments must, in short, “be the final word of a final court.” *Market Street*, 324 U.S. at 551.

These principles squarely foreclose jurisdiction in this case. Strulovitch does not seek review of any “[f]inal judgment[] or decree[],” 28 U.S.C. § 1257(a)—he seeks review of an order denying a stay pending appeal. Nor does he seek review of a decision by New York’s “highest court,” *id.*—he seeks review of a decision of a state trial court, that neither the Appellate Division nor the Court of Appeals has addressed. Far from “the final word of a final court,” *Jefferson*, 522 U.S. at 81 (citation omitted), the interlocutory order over which Strulovitch seeks review has yet to be tested in any appellate tribunal. The trial court’s order therefore flunks both conditions set forth in *Jefferson*. It is, in fact, “subject to . . . further review or correction in [another] state tribunal”—both the Appellate Division and the Court of Appeals—and it also is not “final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.” *Id.* (citation omitted).

2. Strulovitch posits that this Court has jurisdiction under Section 1257(a) because it can “treat” the New York trial court’s decision as final, given that the “federal questions” presented here “are entirely severable from the underlying commercial dispute and ready for this Court’s review.” App. 3-4 (citing *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 481-87 (1975)). *Cox* delineates four discrete categories of cases in which this Court has treated decisions as “final” for purposes of Section 1257(a), but each shares a common prerequisite: that “the highest court of a State has finally determined the federal issue present in a particular case.” 420 U.S. at 477. Here, even if the First Amendment issue is severable from the underlying merits of the commercial dispute pending in New York state court, *Cox* does not excuse the

statutory prerequisite that there be an order “rendered by the highest court of a State in which a decision could be had.” 28 U.S.C. § 1257(a). That is not this case.

National Socialist Party of America v. Village of Skokie, 432 U.S. 43, 44 (1977) (per curiam), does not hold otherwise. There, an Illinois trial court issued an injunction preventing Nazis from marching to “incite or promote hatred against persons of the Jewish faith or ancestry” in Skokie, Illinois. *Id.* at 43 (citation omitted). The applicants sought a stay pending appeal, which the Illinois Appellate Court denied. *Id.* The applicants then “filed a petition for a stay in the Illinois Supreme Court, together with a request for a direct expedited appeal to that court.” *Id.* at 43-44. The Illinois Supreme Court “denied both the stay and leave for an expedited appeal.” *Id.* at 44. Under those circumstances, this Court concluded that the Illinois Supreme Court—Illinois’s “highest court,” 28 U.S.C. § 1257(a)—“finally determined the merits of petitioners’ claim that the outstanding injunction will deprive them of rights protected by the First Amendment during the period of appellate review which, in the normal course, may take a year or more to complete.” *Skokie*, 432 U.S. at 44. And this Court reversed the “order of the Illinois Supreme Court.” *Id.*

This is not *Skokie*. Neither the New York Appellate Division nor the New York Court of Appeals has addressed Strulovitch’s request for a stay of the preliminary injunction pending appeal, nor has Strulovitch sought expedition—or even perfected—his appeal of that preliminary injunction before the Appellate Division. Whatever *Skokie* may have concluded about the “finality” of an injunction implicating First Amendment interests issued in an interlocutory posture, that case does not

excuse Section 1257(a)’s additional requirement that there be a judgment from the highest court in the State—nor does it countenance casting aside this Court’s solicitude for the state-court appellate process. *See Skokie*, 432 U.S. at 45 (Rehnquist, J., dissenting) (“I do not believe that in the long run respect for the Constitution or the law is encouraged by actions of this Court which disregard the limitations placed on us by Congress in order to assure that an erroneous injunction issued by a state trial court does not wrongly interfere with the constitutional rights of those enjoined.”).

Strulovitch claims that he has “exhausted every avenue for relief available to him in the New York courts.” App. 3. That is not correct. The Appellate Division is not New York’s “highest court,” and this Court should not treat it as if it is. Strulovitch cites *Nash v. Florida Industrial Commission*, 389 U.S. 235, 237 (1967), in which this Court reviewed the decision of the District Court of Appeal of Florida, because a “denial” by that court “apparently precludes further review.” *See also id.* at 237 n.1. But Strulovitch does not deny that he could appeal any decision by the Appellate Division to the New York Court of Appeals.

Nor should this Court construe the Appellate Division’s inaction as “tantamount” to a denial. App. 3. Strulovitch cites *AARP v. Trump*, in which this Court recognized that “[a]ppellate courts have jurisdiction to review interlocutory orders that have ‘the practical effect of refusing an injunction.’” 605 U.S. 91, 94 (2025). But that case reviewed a *federal* court’s refusal to issue an injunction. It did not involve the “firm final judgment rule” embodied in 28 U.S.C. § 1257(a) concerning

state-court orders. *Jefferson*, 522 U.S. at 81. And *AARP* involved “inaction in the face of extreme urgency,” such that a delay of “14 hours and 28 minutes[] had the practical effect of refusing an injunction to detainees facing an imminent threat of severe, irreparable harm.” 605 U.S. at 94. Strulovitch does not assert an immediate harm of the same degree. He alleges “present, ongoing, and irreparable harm,” App. 3, but those harms, even if credited, appeared the moment the New York trial court denied a stay of its injunction. Indeed, they presumably appeared the moment the New York trial court issued the first injunction back in 2024, which prohibited Strulovitch “from taking any action to confirm or enforce the [Rockland beis din award] including, without limitation, seeking modification, clarification, or explanation of the Award from the issuing Rabbinical Court.” Supp. Appx. 51a. If *any* delay by a state appellate tribunal could give rise to an immediate emergency application to this Court, the floodgates would open and swallow the statutory jurisdictional limits.

Strulovitch’s complaint that the Appellate Division has not yet acted is also misplaced. Strulovitch has not taken even the most basic steps to accelerate his merits appeal. In *Yeshiva University v. Yu Pride Alliance*, this Court considered an application for a stay pending appeal of “a non-final order of the New York trial court.” 143 S. Ct. 1, 1 (2022) (mem.). The Court denied that application “because it appear[ed] that applicants have at least two further avenues for expedited or interim state court relief,” one of which was that they could “ask the New York courts to expedite consideration of the merits of their appeal.” *Id.* The applicants did “not

assert, nor d[id] the Appellate Division docket reveal, that they ha[d] ever requested such relief.” *Id.* So too here. To this day, Strulovitch has not bothered to perfect his merits appeal in the Appellate Division, let alone seek expedition.

Strulovitch asserts that because the New York Court of Appeals cannot entertain a stay request absent action by the Appellate Division, the “posture here is, therefore, unlike that in *Yeshiva*.” App. 11. For one thing, the fact that (unlike in *Yeshiva*) Strulovitch has no decision from the Appellate Division hardly makes this a better candidate for the Court’s intervention. For another, Strulovitch does not explain why he has failed to perfect his appeal in the Appellate Division, nor does he address his failure to seek expedition, which *Yeshiva* deemed an independent reason to deny interim relief. And this case is unlike *Yeshiva* in other crucial respects. The applicant in *Yeshiva* had already sought relief from the New York Court of Appeals in that case. *See* 143 S. Ct. at 3 (Alito, J., dissenting) (“[T]he Court of Appeals has *already* denied Yeshiva’s application for interim relief . . .”). This Court denied relief in part because it believed New York’s highest court might afford the applicant another opportunity to seek review of the trial court’s order, but that only underscores the need for an applicant to press every avenue in the state appellate courts before seeking relief in this Court, which Strulovitch has not done. *See supra* at 7.

B. Neither The All Writs Act Nor 28 U.S.C. § 2283 Authorizes A Stay

1. Neither the All Writs Act nor its equivalent for state-court proceedings provides authority for issuance of a stay. *See* 28 U.S.C. §§ 1651(a), 2283.

The All Writs Act confers on this Court authority to “issue all writs necessary or appropriate in aid of . . . jurisdiction[] and agreeable to the usages and principles

of law.” *Id.* § 1651(a); *see id.* § 2283 (“A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by an Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.”). The Act is “not a font of jurisdiction.” *United States v. Denedo*, 556 U.S. 904, 914 (2009). It permits issuance of writs only “in aid of” a court’s “statutory jurisdiction,” and it “does not enlarge that jurisdiction.” *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999).

A writ will not issue unless it is “in aid of the Court’s appellate jurisdiction”; “exceptional circumstances warrant the exercise of the Court’s discretionary powers”; and “adequate relief cannot be obtained in any other form from any other court.” Sup. Ct. R. 20.1; *see Shoop v. Twyford*, 596 U.S. 811, 821 (2022) (“[A]ll orders issued under the All Writs Act must be” “necessary or appropriate in aid of” a court’s jurisdiction). So, while the authority to issue writs under the Act “extends to those cases which are within [a court’s] appellate jurisdiction although no appeal has been perfected,” *FTC v. Dean Foods Co.*, 384 U.S. 597, 603-04 (1966) (citation omitted), only “extraordinary” circumstances warrant such relief, *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Commission*, 479 U.S. 1312, 1312 (1986) (Scalia, J., in chambers); *see* Sup. Ct. R. 20.1 (a writ “is not a matter of right but of discretion sparingly exercised”). This case does not present the necessary extraordinary circumstances.

2. The most glaring problem with Strulovitch’s requested relief is that it is not “necessary or appropriate in aid of” this Court’s jurisdiction. 28 U.S.C. § 1651; *see id.* § 2283; *Shoop*, 596 U.S. at 821. Relief meets that exacting requirement only

when, by failing to issue the requested relief, it will be “virtually impossible” or “futile” for this Court to later decide the issue, *Dean Foods*, 384 U.S. at 605, the “appeal will become moot,” *Renaissance Arcade & Bookstore v. County of Cook*, 473 U.S. 1322, 1323 (1985) (Stevens, J., in chambers), or the Court’s “flexibility and authority to decide” the case will be “seriously impair[ed],” *Malliotakis v. Williams*, 146 S. Ct. 809, 811 (2026) (Alito, J., concurring in the grant of a stay) (citation omitted). *Dean Foods* is illustrative. There, this Court held that a federal court could rely on the Act to enjoin the consummation of an allegedly illegal merger agreement as “necessary to protect its own jurisdiction,” because meaningful judicial review post-merger would have been “virtually impossible.” 384 U.S. at 608, 605. In other words, to obtain relief, failing to act now must frustrate this Court’s review later. *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng’rs*, 398 U.S. 281, 295 (1970).

That is not the case here. Strulovitch has already noticed an appeal from the trial court’s preliminary injunction, and that appeal will run its course. There is no suggestion that any further proceedings will moot the federal issues he presents. And there is no suggestion that this Court will be unable to review any appellate decision concerning the preliminary injunction at a later date. “Even without an injunction pending appeal,” “[Strulovitch] may continue [his] challenge to the [preliminary injunction] in the lower courts.” *Hobby Lobby Stores, Inc. v. Sebelius*, 568 U.S. 1401, 1404 (2012) (Sotomayor, J., in chambers). And “[f]ollowing a final judgment, [he] may, if necessary, file a petition for a writ of certiorari in this Court.” *Id.* Because a

stay of the injunction would not be “in aid of” this Court’s “jurisdiction,” relief is unavailable under the Act. *Shoop*, 596 U.S. at 821 (citation omitted).

In arguing otherwise, Strulovitch relies heavily on *Malliotakis*, see App. 2-3, 5, 13; that reliance is misplaced. In *Malliotakis*, this Court granted a stay of a New York trial court’s injunction ordering the State’s redistricting commission to draw a new congressional district along racial lines. 146 S. Ct. at 809. Justice Alito’s concurrence stated that a stay is proper under § 1651 when it is “necessary to prevent a state court from so interfering with a federal court’s consideration or disposition of a case as to seriously impair the federal court’s flexibility and authority to decide that case.” *Id.* at 811 (quoting *Atlantic Coast Line R.R. Co.*, 398 U.S. at 295). But *Malliotakis* was a different case. The impetus for relief flowed from the time it would take to exhaust the state court process: If the Court failed to act, the state-court proceedings “would likely run out the clock before [the Court] could review the order,” leaving a potentially unconstitutional map in place on election day. *Id.* So, by the time the case would have arrived in this Court, the Court would have been precluded from passing on the constitutional questions because an election would have already been held under an allegedly unlawful redistricting plan, resulting in the election of a congressman “whose entitlement to the office would be tainted.” *Id.*

Not so here. If this Court denies a stay, Strulovitch can continue to press his arguments in the New York appellate courts and seek certiorari following their final adjudication of the federal issues, thereby conferring jurisdiction under 28 U.S.C. § 1257(a). And the denial of a stay would neither moot nor frustrate this Court’s later

ability to confront the issues Strulovitch raises. Notably too, the applicant in *Malliotakis* exhausted state court remedies before turning to this Court. *Id.* Strulovitch cannot say the same. *See supra* at 7.

Nor does *Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303 (1983), help Strulovitch. There, Chief Justice Rehnquist and Justice O'Connor granted interim relief to prevent the plaintiffs from deposing German residents in violation of the Convention on Taking of Evidence Abroad in Civil or Commercial Matters. *See id.* at 1303-04; 28 U.S.C. § 1781. The “Michigan Court of Appeals denied leave to appeal,” and the Michigan Supreme Court did not act on an emergency application to stay the depositions. *See Falzon*, 461 U.S. at 1303-04. Under those circumstances, Chief Justice Rehnquist issued a stay pending the Michigan Supreme Court’s decision. After that stay expired following the Michigan Supreme Court’s denial of review, Justice O'Connor subsequently granted a second stay to prevent the depositions from taking place, invoking the All Writs Act. *Id.* at 1304. As in *Dean Foods* and *Malliotakis*, and unlike here, the issue presented would have been mooted without a stay (there, by completion of the depositions). And like *Dean Foods* and *Malliotakis*, but unlike here, the state appellate courts had already addressed the issue.

Finally, Strulovitch’s allegations of ongoing and irreparable harm do not themselves render a stay “necessary or appropriate in aid of” this Court’s jurisdiction. App. 4-5 (emphasis and citation omitted). In arguing otherwise, Strulovitch confuses the carefully delineated conditions under which this Court exercises its power under the All Writs Act with the traditional equitable factors governing any kind of interim

relief. Whether a stay is “necessary or appropriate in aid of” jurisdiction is an independent question that it turns on whether the failure to issue a writ now will frustrate this Court’s review later. *Dean Foods*, 384 U.S. at 603 (citation omitted); *see Renaissance*, 473 U.S. at 1323; *Malliotakis*, 146 S. Ct. at 811 (Alito, J., concurring in the grant of a stay). The focus is on the Court’s ability to review the federal issue—not any harm that might befall a party in the interim while awaiting that review.

3. Strulovitch cannot meet the Act’s other requirements either.

This case does not present the kind of “exceptional circumstances” that can justify relief under the Act. Sup. Ct. R. 20.1. The All Writs Act “may not be used as a substitute for an authorized appeal.” *U.S. Alkali Exp. Ass’n v. United States*, 325 U.S. 196, 203 (1945). And a litigant’s alleged hardship while awaiting error correction does not “justify resort to” § 1651 as “a means of review.” *Id.* at 202-03. This Court’s “reluctan[ce] to interfere with decisions of lower courts” on issues “they are competent to decide and which are reviewable in the regular course of appeal,” *id.*, has special force here. After failing to appeal the trial court’s initial 2024 injunction, agreeing to proceed in New York state court, refusing to participate in a *beis din* with the interested parties, and declining to perfect or expedite his merits appeal of the preliminary injunction in the New York Appellate Division, Strulovitch now comes to this Court pleading for immediate interim relief while he presses on with his appeal in the state-court system. His conduct belies his contention that this is the kind of exceptional case in which this Court should act on an emergency basis.

And this case does not involve the kind of “clearly established” constitutional violation that could justify the extraordinary relief contemplated by the All Writs Act. *Cf. CBS, Inc. v. Davis*, 510 U.S. 1315, 1317 (1994) (Blackmun, J., in chambers). As explained below, the New York trial court applied neutral and generally applicable principles of New York arbitration law in directing Strulovitch to withdraw his attempt to force Bain into arbitration before a separate beis din. *Infra* at 23-31; see *Emp. Div., Dep’t of Human Res. of Ore. v. Smith*, 494 U.S. 872, 877 (1990). The order neither offends Strulovitch’s rights under the Free Exercise Clause nor dictates the beis din’s actions such that it violates church autonomy principles.

What is more, “adequate relief” can, in fact, be “obtained” in another court. Sup. Ct. R. 20.1. Strulovitch has sought relief in the New York Appellate Division, which has the undisputed authority to stay the trial court’s preliminary injunction. That the court has not yet acted on his request does not negate its power to do so.

* * *

The jurisdictional defects plaguing Strulovitch’s application are substantial, dispositive, and an independent reason to deny relief. Strulovitch does not identify any case where this Court has granted interim relief to address an issue decided by a state trial court that has not been addressed by any state appellate tribunal. This should not be the first. The application should be denied on that basis alone.

II. A STAY IS NOT WARRANTED

This Court generally applies a multi-factor test to assess whether to grant a stay in this posture. “To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four

Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). In close cases, “the Circuit Justice or the Court will balance the equities and weigh the relative harms.” *Id.* Strulovitch’s application does not satisfy any of the factors.

A. This Court Is Unlikely To Grant Certiorari

This “Court can and should take care to focus on certworthiness when considering emergency applications.” *Labrador v. Poe ex rel. Poe*, 144 S. Ct. 921, 931 (2024) (mem.) (Kavanaugh, J., concurring in the grant of stay); *see also Does 1–3 v. Mills*, 142 S. Ct. 17, 17-18 (2021) (Barrett, J., concurring in denial of application for injunctive relief). That is especially critical when the All Writs Act is the asserted basis for jurisdiction; after all, there is no possibility that a stay could “aid” the Court’s future jurisdiction if the Court is unlikely to grant review at a later date.

Strulovitch poses two questions for this Court’s review: “(1) whether a court may bar a person from even attempting to resolve a private dispute within a religious tribunal of his own faith,” and (2) “whether it may *compel* him to argue against the religious judgments of his own faith leaders contrary to his own sincere beliefs on matters of religious law.” App. 13. He admits both are questions “of first impression,” *id.*, and does not identify any split of authorities as to either. The questions therefore come to this Court with no decision of any court other than a lone state trial court.

This Court’s “ordinary practice” is to “deny[] petitions insofar as they raise legal issues that have not been considered by any additional Courts of Appeals.” *Box*

v. Planned Parenthood of Ind. & Ky., Inc., 587 U.S. 490, 493 (2019). Here, no appellate court—let alone a federal court of appeals or state court of last resort—has addressed either issue, meaning that neither issue has “percolate[d]” such that it might “assist [this Court’s] review of” these “issue[s] of first impression.” *Id.* at 496 (Thomas, J., concurring); *see also Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment) (“[I]t seems to me at least reasonably possible that the crucible of adversarial testing on which we usually depend, along with the experience of our thoughtful colleagues on the district and circuit benches, could yield insights (or reveal pitfalls) we cannot muster guided only by our own lights.”). The question, then, is whether this Court would choose to be the first. It is hard to imagine a better case for the Court’s repeated maxim that it is a Court “of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

This case is also a remarkably poor vehicle to resolve the questions presented. Strulovitch invoked a civil trial court’s jurisdiction to enforce the first beis din award, Supp. Appx. 3a; he declined to appeal the 2024 injunction precluding him from enforcing the first beis din award or returning to the beis din for “modification, clarification, or explanation,” Appx. 4; *see* Supp. Appx. 51a; he consented to proceeding before the civil trial court and engaged in litigation and discovery before the same, Supp. Appx. 24a, 58a.; and he refused to arbitrate before a beis din initiated by Bain, Supp. Appx. 43a. Strulovitch’s conduct and statements in state court raise forfeiture and waiver concerns that may complicate the Court’s resolution of the questions presented. And the intensely fact-specific nature of the controversy makes

this, at best, a request for the sort of case-specific error correction this Court routinely declines to undertake. There is no reasonable probability the Court would deviate from its normal practice.

B. There Is Not A Fair Prospect That A Majority Of This Court Will Vote To Reverse

Strulovitch argued below that the preliminary injunction offends his rights under the Free Exercise Clause and improperly intrudes into ecclesiastical affairs. Appx. 142-45. Neither of these arguments is likely to garner five votes to reverse. And to the extent Strulovitch raises additional grounds for relief for the first time in this Court, those arguments were neither pressed nor passed on below.

1. The First Amendment broadly protects the free exercise of religion, meaning, “first and foremost, the right to believe and profess whatever religious doctrine one desires.” *Smith*, 494 U.S. at 877. The government cannot, of course, regulate “religious *beliefs* as such.” *Sherbert v. Verner*, 374 U.S. 398, 402 (1963) (emphasis added). “But the ‘exercise of religion’ often involves not only belief and profession but the performance (or abstention from) physical acts” *Smith*, 494 U.S. at 877. This Court has “never held that an individual’s religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate.” *Id.* at 878-79; see *Gonzales v. O Centro Espirita Beneficiente Uniao do Vegetal*, 546 U.S. 418, 424 (2006) (“[T]he Free Exercise Clause of the First Amendment does not prohibit governments from burdening religious practices through generally applicable laws.”).

These principles resolve this case. Parties often “agree[]” to submit commercial “disputes between them . . . to arbitration by a Beth Din.” *Meisels v. Uhr (In re Meisels)*, 593 N.E.2d 1359, 1361 (N.Y. 1992); *see also, e.g., Mew Equity, LLC v. Sutton Land Servs., LLC*, 41 N.Y.S.3d 281, 282-83 (App. Div. 2016); *Kingsbridge Ctr. of Israel v. Turk*, 469 N.Y.S.2d 732, 734 (App. Div. 1983) (mem.); *Weisenberg v. Sass (In re Weisenberg)*, 619 N.Y.S.2d 597, 597 (App. Div. 1994) (mem.). When they do, New York law governs critical aspects of those proceedings. For example, courts may “stay arbitration on the ground that a valid agreement was not made or has not been complied with.” N.Y. C.P.L.R. § 7503(b). Because one cannot be compelled to arbitrate absent a “clear, explicit and unequivocal” agreement to do so, *Messiah’s Covenant Cmty. Church v. Weinbaum*, 905 N.Y.S.2d 209, 211-12 (App. Div. 2010), New York courts restrain rabbinical arbitration when the parties have not agreed to arbitrate, *Schwartz v. Schwartz*, 913 N.Y.S.2d 313, 318 (App. Div. 2010).

Generally applicable neutral principles likewise govern whether beis din awards are enforceable. *In re Hellman (Wolbrom)*, 298 N.Y.S.2d 540, 543 (App. Div. 1969) (collecting cases); *Kingsbridge*, 469 N.Y.S.2d at 734 (citing *Kozlowski v. Seville Syndicate, Inc. (In re Kozlowski)*, 314 N.Y.S.2d 439, 445 (Sup. Ct. 1970)). Strulovitch himself admits that “beis din arbitration clauses are enforceable as ordinary arbitration agreements under CPLR Article 75” and that “civil courts may confirm, compel, or decline to enforce beis din awards using neutral principles of law.” App. 23. For good reason: he invoked that rule in asking the Rockland County trial court to enforce the first beis din award. Supp. Appx. 3a. In short, New York’s laws

concerning when arbitration may proceed and whether arbitration awards may be enforced are “valid and neutral law[s] of general applicability,” *Smith*, 494 U.S. at 879 (citation omitted), that New York courts regularly apply to arbitration proceedings commenced before a beis din.

Guided by these generally applicable laws, the trial court’s preliminary injunction in this case does not offend Strulovitch’s First Amendment rights. Strulovitch agreed to proceed in New York trial court, going so far as to expressly disclaim his desire to arbitrate before the Brooklyn beis din that *Bain* initiated. Supp. Appx. 24a (disclaiming that the parties had any “agreement” to arbitrate). But Strulovitch then defied the very civil court process he insisted on. After discovery ended, he commenced another beis din, and again opted not to include other parties with an interest in the nursing facility. Strulovitch’s own rabbinical representative “confirmed that the purpose” of this beis din was “secular, as the purpose [was] to confirm the arbitration award” from the first beis din “and demonstrate that Bain has no right of first refusal.” Appx. 7. And the hazmana of the beis din was titled a “[d]ispute” “regarding: court case Index No. [7]5548/2024,” the case number for the ongoing New York state case below. *See* Supp. Appx. 53a.

The trial court was thus faced with Strulovitch’s efforts to commence yet another beis din arbitration to press his claims concerning the same commercial dispute the parties had already been litigating in court for years. And Strulovitch’s conduct was contrary to the 2024 injunction’s command that he refrain “from taking any action to confirm or enforce the [Rockland beis din award] including, without

limitation, seeking modification, clarification, or explanation of the Award from the issuing Rabbinical Court.” Supp. Appx. 51a. In light of that—and the beis din’s seruv, which subjects Bain to public opprobrium for declining to submit to an arbitration he never agreed to—the trial court ordered Strulovitch to “take all steps necessary to have the Beis Din withdraw” its seruv against Bain, and to “withdraw[] the entire proceeding.” Appx. 9. The order does not compel or direct the beis din itself to do or say anything; it is directed solely at Strulovitch, who initiated the beis din without any agreement to arbitrate. The trial court’s injunction flowed from its general authority to proscribe a party from initiating any arbitration in a beis din absent a “clear, explicit and unequivocal” agreement to do so, *Messiah’s Covenant*, 905 N.Y.S.2d at 211-12; *see also* N.Y. C.P.L.R. § 7503(b), and to enforce its orders and adjudicate the parties’ dispute without unjustified interference.

Other courts have confronted similar circumstances. For example, in *In re Congregation Birchos Yosef*, a Chapter 11 debtor “commenced an adversary proceeding against” an entity that, in response, “invoked a *beis din*.” 535 B.R. 629, 631 (Bankr. S.D.N.Y. 2015). The beis din issued “an *ekul*,” which prohibited the Debtor’s principals “from continuing to pursue the adversary proceeding in” the bankruptcy court, and the hazmana from the beis din “warned the Debtor’s principals that if they did not participate in the *beis din* proceeding they could be subject to a [seruv].” *Id.* at 631-32. The bankruptcy court explained that “the mere threat of the issuance of [a seruv]” and “the commencement of the *beis din* proceeding itself, has already adversely affected the Debtor” by making it “more difficult to conduct this

case by exerting significant pressure to cease pursuing the Debtor’s claims against those who invoked the *beis din*.” *Id.* at 632. And although the Debtor’s principals could ignore the *beis din*, “that choice would involve substantial courage in light of the clear and imminent harm that would result to them if they did so.” *Id.*

The court therefore granted a motion to enforce the automatic bankruptcy stay under 11 U.S.C. § 362(a), and issued coercive sanctions to compel the respondent to “request the *beis din* to cease its proceeding and to vacate the *ekul*.” *Id.* at 638-39. The court recognized that the Bankruptcy Code’s provision of an automatic stay “is clearly neutral on its face and is also neutral and generally applicable,” and that it therefore did not violate the Free Exercise or Establishment Clauses to enforce the stay. *Id.* at 637. The court admonished that its ruling “should not be read to exclude religious doctrine and processes from a role in this case.” *Id.* at 639. But “they may not be invoked in a unilateral and coercive way to evade the consequences of conduct that neutral laws sanction.” *Id.* at 639-40; *see also Garcia v. Church of Scientology Flag Serv. Org., Inc.*, 2021 WL 5074465, at *11 (11th Cir. Nov. 2, 2021) (“[R]eligious arbitrations are not subject to a special exemption from the neutral and generally applicable legal standards that apply to any arbitration.”).

The same principles apply here. The New York trial court understood that Strulovitch’s invocation of the *beis din*—and the associated order from the *beis din* subjecting Bain to a *seruv*—threatened to undermine and interfere with the court’s ability to adjudicate the commercial dispute between the parties. The *seruv* flowed from Bain’s supposed refusal to “arbitrate” the parties’ commercial dispute in the *beis*

din, Appx. 136, but generally applicable and neutral New York laws permit trial courts to foreclose arbitration where parties do not agree to proceed in such a forum. And the court recognized that if the parties were to reach an “agreement” to arbitrate, they could, of course, proceed before a beis din. Appx. 9. Based on neutral and generally applicable principles of New York law that allow courts to prohibit parties from unilaterally proceeding to arbitration, the court ordered Strulovitch to take necessary steps to undo the seruv and withdraw the separate beis din. *Id.* That order flows from widely applicable principles animating the orderly resolution of civil disputes between parties, and it does not offend the First Amendment.

2. Strulovitch’s arguments to the contrary are misplaced.

Strulovitch contends the preliminary injunction “is not subject to the framework set out in *Smith*” because the order “is not based on any New York statute, CPLR provision, or other source of neutral, generally applicable law.” App. 19. That argument ignores the provisions and caselaw cited above, which authorize New York courts to enjoin parties from proceeding in arbitration absent an agreement to do so. *See* N.Y. C.P.L.R. § 7503(b). That the New York trial court applied neutral and generally applicable law to prevent Strulovitch from dragging Bain into an arbitration against his will readily distinguishes this case from *Fulton v. Philadelphia*, 593 U.S. 522 (2021) and *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020).

Strulovitch protests that the order “was explicitly designed to address the *religious* effects of the beis din proceeding (and the resulting seruv),” App. 19, but he

does not deny that the seruv threatened Bain with severe consequences. *See Congregation Birchos Yosef*, 535 B.R. at 632 (noting that failing to appear before a beis din threatens “clear and imminent harm”). Even the mere “threat” of a seruv can “affect[] not only” someone’s “standing in the community,” but also his “children.” *Id.* “There is no question that [Strulovitch],” by “invok[ing] the *beis din*[.] foresaw the consequences of [his] actions on [Bain].” *Id.* And the beis din likewise warned that the seruv subjected Bain “to all forms of communal sanctions and societal pressures.” Appx. 136. Because of those consequences, the seruv is tantamount to compelling Bain to proceed in the beis din and not in the New York court system. Put another way, an order directing Strulovitch to take the necessary steps to remove the seruv is the functional equivalent of an order directing Strulovitch to cease his attempts to arbitrate this dispute before a beis din—precisely the kind of *conduct* that neutral and generally applicable laws can regulate. *Smith*, 494 U.S. at 878-79.

Strulovitch now claims that the preliminary injunction interferes with his “efforts to have the parties agree to resolve this matter—voluntarily—in [a] beis din,” and that those efforts “do not disrupt the civil proceedings below.” App. 20. But it was Strulovitch who invoked the Rockland County trial court’s jurisdiction to enforce the first beis din award. Supp. Appx. 3a. It was Strulovitch who refused to proceed in the Brooklyn beis din Bain initiated with the parties interested in the nursing facility. Appx. 93-98. It was Strulovitch who told the New York trial court there was no agreement to arbitrate. Supp. Appx. 24a. And it was Strulovitch who told the trial court he was “happy” for “everything to be resolved” before that court, rather

than via a beis din arbitration. Supp. Appx. 25a. And to be clear: the trial court never told the parties they could not resolve their dispute *voluntarily* in a beis din; on the contrary, the trial court’s order expressly stated that “[t]he parties may agree to go to a beis din (this present one, or any other), if they wish.” Appx. 9.

Nor does the preliminary injunction “intrude[] into the central religious affairs of an ecclesiastical court.” App. 22. The so-called church autonomy doctrine prevents courts from adjudicating “theological controvers[ies]” and other matters directly implicating religious doctrine. *Serbian E. Orthodox Diocese for the U.S.A. & Can. v. Milivojevic*, 426 U.S. 696, 713-14 (1976) (quoting *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 733 (1872)). For example, courts cannot second-guess that an individual is no longer a member of a Catholic religious order, *McCarthy v. Fuller*, 714 F.3d 971, 979-80 (7th Cir. 2013), or determine “who has the power to restructure the Serbian Orthodox diocese,” *Ambassador Coll. v. Geotzke*, 675 F.2d 662, 665 (5th Cir. Unit B 1982) (citing *Milivojevic*). But the order here does nothing of the kind. It does not render a religious judgment or concern a theological controversy—it is not even directed at the beis din. Nor can the preliminary injunction be rewritten to make the beis din “the target.” Br. of Amicus Curiae The Becket Fund for Religious Liberty, at 5; *cf. Esses v. Rosen*, No. 24-cv-3605, 2024 WL 4494086, at *4 (E.D.N.Y. Oct. 15, 2024) (declining to enjoin dissemination of *seruv* as a remedy for a defamation claim because doing so would require the court to “second-guess[] a religious court’s view of impropriety”). All the preliminary injunction does is order Strulovitch to withdraw

the beis din arbitration, such that the parties can resolve their dispute, as they agreed, in New York state court.

3. Strulovitch's other arguments are not preserved. His application mentions his "First Amendment speech and associational rights," App. 20 n.2, and it invokes the Establishment Clause's prohibition against government compelled religious observance, App. 21-22. But Strulovitch did not raise these arguments below, and no court has passed on them. This Court should not be the first. See *Cutter*, 544 U.S. at 718 n.7; see *United States v. Williams*, 504 U.S. 36, 41 (1992) (this Court's "traditional rule . . . precludes a grant of certiorari only when 'the question was not pressed or passed on below'" (citation omitted)); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 55-56 n.4 (2002) (arguments not made below are waived).

C. Strulovitch Fails To Show Irreparable Harm

That First Amendment harms are generally irreparable offers little guidance given Strulovitch's approach to obtaining the relief he seeks in this Court. Where a litigant "evidence[s] no urgency in obtaining relief" by, for example, "failing to seek expedited review," such conduct "undercuts [his] claims of irreparable harm." *Hanson v. District of Columbia*, 120 F.4th 223, 245-46 (D.C. Cir. 2024). Strulovitch's litigation conduct fatally undermines the argument that he faces irreparable harm.

Since 2024, Strulovitch has been enjoined from taking any action to "confirm or enforce" the initial award from the Rockland beis din and from "seeking modification, clarification, or explanation" from that beis din. Supp. Appx. 51a. During the ensuing nearly two years, Strulovitch did not appeal or otherwise challenge that injunction as violative of his First Amendment rights. Strulovitch

refused to participate in a beis din initiated by Bain with the relevant parties. Appx. 93-98. And he told the Westchester trial court that he was “happy” to instead litigate their commercial dispute in civil court. Supp. Appx. 25a, 38a. Only when that litigation strategy faltered did Strulovitch turn to yet another beis din, which prompted the preliminary injunction he now challenges. Supp. Appx. 53a. But Strulovitch has exhibited no urgency with this challenge either; four months after filing his notice of appeal, he still has not perfected the appeal or sought expedition.

“Were the injury to” Strulovitch “as severe as” he “now claim[s], one would think that” he “would have” acted “with dispatch.” *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313 (1977) (Marshall, J., in chambers); *West Virginia v. B.P.J. ex rel. Jackson*, 143 S. Ct. 889, 889 (2023) (Alito, J., dissenting from the denial of application to vacate injunction) (“[I]t is a wise rule in general that a litigant whose claim of urgency is belied by its own conduct should not expect discretionary emergency relief from a court.”). Strulovitch’s “delay in . . . seeking a stay vitiates much of the force of [his] allegations of irreparable harm.” *Beame*, 434 U.S. at 1313; *cf. Henderson v. United States*, 575 U.S. 622, 625 n.1 (2015) (“The unclean hands doctrine proscribes equitable relief when . . . an individual’s misconduct has ‘immediate necessary relation to the equity that he seeks.’” (citation omitted)).

Finally, to the extent Strulovitch asserts that he “remains blocked from even *attempting* to have the parties voluntarily proceed in parallel to seek religious resolution on the[] issue[] before a beis din,” App. 24, that is incorrect. The trial court was explicit in its decision: “The parties may agree to go to a beis din (this present

one, or any other), if they wish.” Appx. 9. The *involuntary* nature of Strulovitch’s attempt to seek religious resolution was (and is) the issue; the court ordered that “these disputes among the parties shall remain in front of this Court” only in the absence of “such an agreement.” *Id.* Voluntary proceedings are not enjoined.

D. The Balance Of The Equities Counsels Against A Stay

To the extent this Court balances the equities, they counsel against a stay. Bain faces a severe, public sanction due to Strulovitch’s decision to unilaterally initiate an unagreed arbitration before yet another *beis din* after refusing to participate in a *beis din* proceeding commenced by Bain to address the same issues. As explained above, although Orthodox Jews can choose to “not appear before the *beis din*, . . . that choice would involve substantial courage in light of the clear and imminent harm that would result to them if they did so.” *Congregation Birchos Yosef*, 535 B.R. at 632. And the record here confirms the same: that a *seruv* subjects Bain “to all forms of communal sanctions and societal pressures.” Appx. 136. There is serious countervailing harm.

The public interest also counsels against a stay. Between Strulovitch and Bain, the parties have now initiated three different proceedings before a *beis din*—one in Rockland County and two in Brooklyn—and two different proceedings in the New York state court system, one in Rockland County and one in Westchester County. Bain attempted to resolve this dispute through the first Brooklyn *beis din*, by involving the parties interested in the nursing facility that lies at the center of this dispute. *See* Appx. 93-98. But Strulovitch refused, *see id.*, and said he was “happy” for the New York state trial court to adjudicate this dispute, Supp. Appx. 25a.

Strulovitch never appealed from the 2024 injunction, which prohibited him from seeking to enforce the award issued by the initial Rockland beis din or otherwise returning to that beis din. Yet two years later, he proceeded to seek enforcement of that award before another beis din anyway. Appx. 4. The public interest favors allowing New York courts to implement procedural rules governing the efficient resolution of its commercial disputes—and allowing the state-court appellate process to run its course. *See, e.g., Younger v. Harris*, 401 U.S. 37, 45 (1971); *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 508 (1985) (“[F]ederal courts should avoid the unnecessary resolution of federal constitutional issues.”) (O’Connor, J., concurring).

CONCLUSION

The Court should deny the application for a stay.

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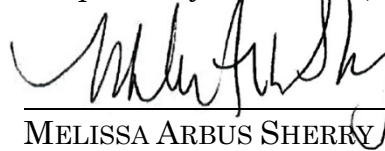
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